

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL HESSE,

Plaintiff,

v.

COUNTY OF SACRAMENTO, et al.,

Defendants.

No. 2:21-cv-1931 WBS KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a former county inmate, proceeding through counsel. Defendant Sanga's fully-briefed motion to set aside default is before the court. As discussed below, it is recommended that the motion be granted

Motion to Set Aside Clerk's Default

Legal Standard

A court may set aside an entry of default for good cause. Rule 55(c). The party seeking relief from the entry of default bears the burden of showing good cause to set aside the entry of default. See Franchise Holding II, LLC v. Huntington Rests. Group, Inc., 375 F.3d 922, 926 (9th Cir. 2004) (reviewing district court's set aside of default for abuse of discretion). A court considers three factors when examining good cause: "(1) whether [the party seeking to set aside the default] engaged in culpable conduct that led to the default; (2) whether [it] had [no] meritorious defense; or (3) whether reopening the default judgment would prejudice the other

1 party.” United States v. Mesle, 615 F.3d 1085, 1091 (9th Cir. 2010) (quoting Franchise Holding,  
 2 375 F.3d at 925-26). “The court’s discretion is especially broad where . . . it is entry of default  
 3 that is being set aside, rather than a default judgment.” O’Connor v. State of Nev., 27 F.3d 357,  
 4 364 (9th Cir. 1994). The factors are more liberally applied with respect to a request to set aside  
 5 the entry of default, because “there is no interest in the finality of the judgment with which to  
 6 contend.” Mesle, 615 F.3d at 1091 n.1.

7 Moreover, the Ninth Circuit’s “rules for determining when a default should be set aside  
 8 are solicitous towards movants, especially those whose actions leading to the default were taken  
 9 without the benefit of legal representation.” Mesle, 615 F.3d at 1089. As the party seeking to set  
 10 aside entry of default, a defendant bears the burden of showing good cause. Hawaii Carpenters’  
 11 Trust Fund v. Stone, 794 F.2d 508, 513-14 (9th Cir. 1986).

#### 12 A. Culpable Conduct

13 “[A] defendant’s conduct is culpable if he has received actual or constructive notice of the  
 14 filing of the action and intentionally failed to answer. TCI Group Life Ins. Plan v. Knoebber, 244  
 15 F.3d 691, 697 (9th Cir. 2001), overruled on other grounds by Egelhoff v. Egelhoff ex rel. Breiner,  
 16 532 U.S. 141, 147-50 (2001). “[I]n this context the term ‘intentionally’ means that a movant  
 17 cannot be treated as culpable simply for having made a conscious choice not to answer; rather, to  
 18 treat a failure to answer as culpable, the movant must have acted with bad faith, such as an  
 19 intention to take advantage of the opposing party, interfere with judicial decisionmaking, or  
 20 otherwise manipulate the legal process.” Mesle, 615 F.3d at 1092 (internal quotation marks  
 21 omitted). “[S]imple carelessness is not sufficient to treat a negligent failure to reply as  
 22 inexcusable, at least without a demonstration that other equitable factors, such as prejudice, weigh  
 23 heavily in favor of denial of the motion to set aside a default.” Id. On the other hand, where the  
 24 party is “legally sophisticated,” the Ninth Circuit has held that in the context of default, “an  
 25 understanding of the consequences of its actions may be assumed, and with it, intentionality.” Id.  
 26 at 1093; see also Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc., 840 F.2d 685,  
 27 690 (9th Cir. 1988) (defendant was “a lawyer, presumably . . . well aware of the dangers of  
 28 ignoring service of process”).

1 Contrary to plaintiff's contentions that defendant Sanga's inaction was culpable,  
2 defendant Sanga declares that she has never seen the emails addressed in plaintiff's opposition;  
3 has never spoken with Ms. Cahill and does not know who Cahill is; was unaware of this case in  
4 February of 2022, and was not served with the summons and complaint until August of 2022, at  
5 which time defendant Sanga was told by her supervisor Veer Babu that the county attorney would  
6 handle the case. (ECF Nos. 32-1; 37-1.) Thus, defendant Sanga declares, she assumed the county  
7 attorney would respond, and it was never defendant Sanga's intention to ignore the lawsuit. (ECF  
8 Nos. 32-1; 37-1.) Defendant Sanga further declares she was only recently informed that the  
9 county's attorneys filed a notice of errata and amended answer in February of 2022, but was  
10 never provided a copy of either document. (ECF No. 32-1 at 2.)

11 Moreover, defendant Sanga, a medical doctor, declares she is not sophisticated with  
12 respect to litigation and has no experience with legal matters of this nature. (ECF No. 37-1 at 1.)

13 While plaintiff claims it was clear by February of 2022 that county counsel was not going  
14 to handle this case on behalf of defendant Sanga, plaintiff fails to demonstrate that Sanga was  
15 aware of the lawsuit in February, or that Sanga was aware in February that county counsel was  
16 not going to represent her or was privy to any of the emails between Cahill and plaintiff's  
17 counsel. Further, defendant Sanga did not have benefit of legal counsel until she retained counsel  
18 on November 1, 2022, and her counsel promptly moved to set aside the default on November 18,  
19 2022.

20 While this case has gotten off to a late start based in part on the confusion surrounding  
21 which defendants county counsel would represent, there are no arguments alleging, or facts  
22 showing, bad faith.

23 The undersigned is not persuaded that defendant Sanga intentionally ignored the lawsuit,  
24 but rather mistakenly believed county counsel was going to represent her. Thus, the undersigned  
25 finds defendant Sanga did not engage in culpable conduct.

26 B. Meritorious Defense

27 The movant "is required to make some showing of a meritorious defense as a prerequisite  
28 to vacating an entry of default." FOC Fin. Ltd. P'ship v. Nat'l City Commercial Capital Corp.,

1 612 F. Supp. 2d 1080, 1082-85 (D. Ariz. 2009) (citing Hawaii Carpenters' Trust Funds, 794 F.2d  
2 at 513. To satisfy the “some showing” standard, the movant must “present specific facts that  
3 would constitute a defense.” FOC Fin. Ltd. P'ship, 612 F. Supp. 2d at 1082-85 (quoting TCI  
4 Group Life Ins. Plan, 244 F.3d at 700).

5 Defendant Sanga argues that she has a meritorious defense because plaintiff was seen by  
6 several medical professionals at the County Jail; Sanga saw plaintiff only briefly, well over two  
7 weeks after the splint at issue was removed. (ECF No. 32 at 6-7.) Defendant Sanga also provided  
8 Dr. Tooichi's testimony that a splint is not typically used beyond the first few days after surgery;  
9 indeed, Dr. Tooichi agreed that if a splint is worn too long, “that actually causes there to be  
10 stiffness and contracture.” (Tooichi Dep. at 16, 57 (ECF No. 32 at 13, 14.) Further, defendant  
11 Sanga argues that a meritorious defense is supported by the draft answer provided, which includes  
12 her allegations and affirmative defenses. (ECF No. 32 at 7, citing ECF No. 32 at 17-27 (proposed  
13 answer).)

14 Plaintiff counters that defendant Sanga's belief that a splint was not needed at the time  
15 plaintiff was admitted into the jail does not mean that a splint was never needed or some other  
16 medical treatment was not needed. Plaintiff contends defendant Sanga is liable because she  
17 deliberately failed to address plaintiff's medical needs as his finger began and completely  
18 contracted while under her care. Plaintiff argues that defendant Sanga's motion fails to present  
19 any specific facts that would constitute a defense for her specific omissions as pled in the  
20 complaint.

21 In reply, defendant Sanga points out that plaintiff's conclusory assertion that Dr. Sanga  
22 “deliberately failed to address [plaintiff's] medical needs,” fails to provide proof for such  
23 assertion. (ECF No. 37 at 3.) Defendant Sanga denies she was deliberately indifferent; she only  
24 saw plaintiff one time, well over two weeks after the splint at issue was removed and issued  
25 various orders following the brief encounter. (Id., citing Sanga's Proposed Ans. at 4.) Dr. Sanga  
26 issued such orders to address what she “understood in her professional judgment to be plaintiff's  
27 medical needs when she treated him.” (ECF No. 37 at 3.)

28 The burden to show a meritorious defense in support of a motion to set aside default “is

1 not extraordinarily heavy.” Mesle, 615 F.3d at 1094. Defendant need only “allege sufficient  
2 facts that, if true, would constitute a defense. . . .” Id. Plaintiff may disagree with the veracity of  
3 defendant’s assertions and the ultimate merit of such defenses, but the court need not decide the  
4 case in defendant’s favor prior to granting the motion to set aside the default. See id. (“[T]he  
5 question whether the factual allegation [i]s true is not to be determined by the court when it  
6 decides the motion to set aside the default.”) (quotation omitted). The court resolves any doubts  
7 in favor of granting the motion and finds that “there is some possibility that the outcome of the  
8 suit after a full trial will be contrary to the result achieved by the default.” Hawaii Carpenters’  
9 Trust Fund, 794 F.2d at 513.

10 The undersigned finds defendant Sanga set forth a potentially meritorious defense.  
11 Plaintiff will have the opportunity to test the viability of defendant Sanga’s defense through this  
12 litigation.

### 13 C. Prejudice

14 To prevent setting aside default, prejudice to a non-moving party “must result in greater  
15 harm than simply delaying resolution of the case[,] [r]ather, the standard is whether [the  
16 nonmovant’s] ability to pursue his claim will be hindered.” FOC Fin. Ltd. P’ship., 612 F. Supp.  
17 2d at 1082-85 (quoting TCI Group Life Ins. Plan, 244 F.3d at 701). “[M]erely being forced to  
18 litigate on the merits cannot be considered prejudicial for purposes of lifting a default judgment.”  
19 Id.

20 Defendant Sanga argues that plaintiff will not be prejudiced if entry of default is set aside  
21 because plaintiff will merely be forced to litigate his case on the merits, which does not amount to  
22 prejudice. (ECF No. 32 at 7.) Even if delay were a factor, delay has been minimal. (Id.)

23 Plaintiff disagrees, arguing that because the deposition of plaintiff’s treating physician Dr.  
24 Tooichi has already been taken, a few lines of questioning were rendered moot by defendant  
25 Sanga’s failure to answer, requiring Dr. Tooichi’s recall as a deponent. Plaintiff contends that if  
26 Dr. Tooichi objects to such recall and such objection is sustained, plaintiff would be prejudiced.  
27 (ECF No. 36 at 5, citing Fed. R. Civ. P. 30(a)(2) (leave of court required to depose a deponent  
28 who has already been deposed).) In addition, plaintiff objects that because defendant Sanga

1 failed to explain how she learned of entry of judgment and how she hired her attorney, “[i]t is  
2 reasonable to assume that defendants are working together as a unified front which potentially  
3 allows defendants the opportunity to not point the finger at one another,” purportedly suggesting  
4 an “opportunity for fraud or collusion.” (ECF No. 36 at 5.)

5 In reply, defendant Sanga counters that plaintiff failed to provide facts supporting his view  
6 that because Dr. Tooichi’s deposition has already been taken, plaintiff will suffer prejudice. In  
7 any event, because Dr. Tooichi is plaintiff’s treating physician, defendant Sanga argues that  
8 plaintiff has access to the doctor and could just contact the doctor and obtain answers to his  
9 questions. (ECF No. 37 at 3.) In addition, defendant Sanga contends plaintiff failed to explain  
10 how the brief default led to fraud or collusion.

11 The undersigned is not persuaded by plaintiff’s speculation concerning a “potential”  
12 opportunity for fraud or collusion. As to Dr. Tooichi’s deposition, under the circumstances, it is  
13 likely defendant Sanga would stipulate to re-calling Dr. Tooichi for a second deposition. But  
14 certainly the undersigned would entertain a motion for one. In addition, the prior discovery and  
15 scheduling order was vacated and has not yet been reissued. On this record, the undersigned  
16 cannot find that plaintiff will be prejudiced if the clerk’s default as to defendant Sanga is set  
17 aside.

#### 18 Conclusion

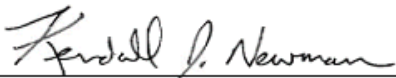
19 In conclusion, the undersigned determines that all three of the good cause factors favor  
20 setting aside the clerk’s entry of default against defendant Sanga. Defendant Sanga provided a  
21 proposed answer and should be ordered to answer the complaint within seven days after issuance  
22 of the district court’s order addressing these findings and recommendations.

23 Accordingly, IT IS HEREBY RECOMMENDED that:

- 24 1. Defendant Sanga’s motion to set aside clerk’s default (ECF No. 31) be granted;
- 25 2. The Clerk of the Court be directed to set aside the clerk’s default, entered on October  
26 26, 2022 (ECF No. 31); and
- 27 3. Within seven days from any district court order adopting these findings and  
28 recommendations, defendant Sanga shall file a responsive pleading.

1           These findings and recommendations are submitted to the United States District Judge  
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
3 after being served with these findings and recommendations, any party may file written  
4 objections with the court and serve a copy on all parties. Such a document should be captioned  
5 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
6 objections shall be filed and served within fourteen days after service of the objections. The  
7 parties are advised that failure to file objections within the specified time may waive the right to  
8 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9 Dated: January 26, 2023

10   
11 KENDALL J. NEWMAN  
12 UNITED STATES MAGISTRATE JUDGE

13 /hess1931.def  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28